

Appln No. 10/757,637

Amdt date June 8, 2005

Reply to Office action of December 8, 2004

REMARKS/ARGUMENTS

Claims 1-23 were pending in this application and examined. In this amendment, claims 1, 2, 4-6, 10, 13-16, 21-23 have been amended. Claims 7-9 and 19 have been cancelled.

The Examiner objected to certain informalities in the specification. The specification has been amended to correct these and other informalities. No new matter has been added.

The Examiner objected to claim 16 due to an informality. Claim 16 has been amended as suggested by the Examiner to correct this informality.

The Examiner rejected claims 1-6 and 19 under Section 112 for insufficient antecedent basis. Claim 19 has been cancelled. Claims 1-6 (or their parent claims) as well as other claims have been amended to correct the antecedent basis insufficiencies identified by the Examiner and others.

The Examiner rejected claims 1-23 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Applicant respectfully traverses these rejections.

Claims 1-23 each include elements related to complex computations and have been amended to clarify that certain data used in the calculations is obtained electronically and certain steps are performed by a processor. Applicants believe these elements clearly fall within the 'technical arts,' though Applicant disagrees with the Examiner's characterization of this "requirement." First, applicants are not aware of any authority, whether statutory, judicial or PTO rules or policies that set forth the "two-prong test of: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result." None is cited by the Examiner in the Office action. More specifically, no authority was cited by the Examiner for the assertion that the claims are non-statutory because the "recited steps can be

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performed in the mind of the user or by use of a paper and pencil."

The Federal Circuit has recently addressed statutory subject matter with respect to method claims in *AT&T Corp v. Excel Communications Inc.*, 172 F.3d 1352, 1356-58 (Fed. Cir. 1999), *cert denied* 120 S.Ct. 368 (1999) (applying holding of *State Street Bank & Trust Co. v. Signature Financial*, 149 F.3d 1368, 1373-77 (Fed. Cir. 1998) to method claims). Without mentioning any "technological arts" requirement, the Federal Circuit in *AT&T* found the claims to meet the Section 101 statutory subject matter requirement.

In comparison with the claims in *AT&T*, the claims of the present Application are more clearly related to the 'technological arts.' An independent claim in *AT&T*, which was found statutory by the Federal Circuit, recites:

1. A method for use in a telecommunications system in which interexchange calls initiated by each subscriber are automatically routed over the facilities of a particular one of a plurality of interexchange carriers associated with that subscriber, said method comprising the steps of:

generating a message record for an interexchange call between an originating subscriber and a terminating subscriber, and

including, in said message record, a primary interexchange carrier (PIC) indicator having a value which is a function of whether or not the interexchange carrier associated with said terminating subscriber is a predetermined one of said interexchange carriers.

See *AT&T Corp v. Excel Communications Inc.*, at 1354. The claim elements only require generating a record for an interexchange call and including an indicator within the record. Nothing in these elements requires any use of "technological

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arts." Rather, each element could be performed by a human. This AT&T claim does not recite any elements that more clearly identifies it as falling within the 'technological arts' than the obtaining price data electronically or performing certain calculations with a processor as recited in the claims in this Application. Therefore, claims 1-23 meet the requirements of 35 U.S.C. § 101. Accordingly, reconsideration and withdrawal of the non-statutory subject matter rejections of these claims are requested.

The Examiner rejected claims 1-2 and 7-9 under 35 U.S.C. 103(a) as being obvious over Jaehn et al. (US PG Pub 2003/01259994) in view of Tawaga (Pat. No. 5,732,398). The Examiner rejected claims 3 and 16-21 under 35 U.S.C. 103(a) as being obvious over Jaehn in view of Tawaga and in further view of Laufer (US PG Pub 2004/0006507). The Examiner rejected claims 4-6, 10-14, and 22-23 as being obvious in light of Jaehn, Tagawa, Laufer and in further view of Sprenger et al (US PG Pub 2003/0040946). Finally, the Examiner rejected claim 15 as obvious in light of Jaehn, Tagawa, Laufer, Sprenger, and Walker (U.S. 6,134,534). Applicants respectfully traverse these rejections.

The Application contains independent claims 1, 10 and 16. The Examiner's rejections of these claims will be addressed in turn. As the remaining claims are dependent on one of these independent claims, and it is shown below that the rejection of the independent claims should be withdrawn, applicants do not specifically address the rejection of any of these dependent claims, without admitting the validity of any of the Examiner's rejections of these claims.

The Examiner rejected claim 1 based on Jaehn and Tawaga. Jaehn relates to an interactive display and method for displaying travel-related rates and data in an efficient manner.

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As recognized by the Examiner, though, Jaehn does not disclose calculating a cruise rating based on pricing data and correlation coefficients, which are recited in Claim 1.

Tagawa discloses a self-service system for selling travel-related services or products. However, Tagawa does not relate to calculating cruise rating based on pricing data. Instead, the system of Tagawa allows a user to purchase travel-related products without the use of a travel agent. The Examiner cites Tagawa as disclosing purchasing cruises, as well as other modes of travel. However, Tagawa does not disclose or suggest, and the Examiner does not asserted otherwise, that Tagawa discloses "calculating a cruise rating, price affecting factors or correlation coefficients" as the Examiner has states is not disclosed by Jaehn. Accordingly, as admittedly, the Examiner has not cited any prior art that discloses or suggests these features, the Examiner has not made a *prima facie* showing of obviousness and the rejection should be withdrawn.

The Examiner rejected claim 10 based on Jaehn, Tagawa, Laufer and in further view of Sprenger et al., although only Jaehn and Sprenger et al. are discussed in particular with respect to claim 10. The Examiner recognized that Jaehn does not disclose calculating a daily price for one or more cruise ships, comparing the daily price and calculating a price index if the comparison exceeds a predetermined value. The Examiner cites Sprenger as disclosing that some activities have elements of other components (e.g. a cruise includes both travel and lodging) and disclosing a price threshold feature. Applicants fail to appreciate the relevance of the Sprenger disclosure regarding some activities having elements of other components. If this was intended to relate to the claimed "price affecting factors," neither Jaehn nor Sprenger disclose or suggest calculating a daily price for each of one or more cruise ships

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based on at least one price affecting factor. Further, the Examiner does not cite any support in Jaehn or Sprenger for the claimed comparing the daily price (that is not disclosed in Jaehn or Sprenger) with pricing data over a period of time. Last, with respect to the "threshold feature," claim 10 has been amended to clarify that the comparison is to determine the consistency of the calculated daily price with the pricing data and to use the daily pricing to calculate a price index if a consistency requirement is met. This is fundamentally different from the threshold feature disclosed in Sprenger related to the results of a user directed search of a travel database. Accordingly, as several claimed features are not disclosed or suggested in the cited references, the Examiner has not made a *prima facie* showing of obviousness and the rejection of claim 10 should be withdrawn.

The Examiner rejected claim 16 based on Jaehn, Tagawa, and in further view of Laufer, although only Jaehn and Laufer are discussed in particular with respect to claim 16. The Examiner recognized that Jaehn does not disclose comparing the cruise being charged with an expected price. The Examiner then states that Laufer et al. disclose that the anticipated occupancy rates are determined using historical occupancy rate information for the area or for a competitive set of facilities in the area (paragraph 0011). However, applicants fail to understand how the anticipated occupancy rates relate to comparing cruise prices with expected prices. In any case, the Examiner fails to discuss entirely the creation of a regression formula based on pricing data or the calculating expected prices of specific cruises as recited in claim 16. The Examiner has not cited any reference as disclosing these claimed features. Accordingly, as several claimed features are not disclosed or suggested in the cited references, the Examiner has not made a *prima facie*

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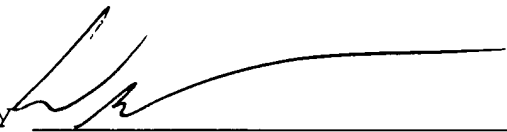
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showing of obviousness and the rejection of claim 16 should be withdrawn.

In view of the foregoing, it is believed that all claims now pending, namely claims 1-6, 10-18 and 20-23 patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (626) 795-9900.

Respectfully submitted,

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